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ABSTRACT

This report describes activities of the National Council on Disability (NCD) during fiscal year 2001. Activities were focused around NCD's four strategic goals: (1) to enhance the lives of people with disabilities of all ages and backgrounds through the development of policy recommendations; (2) to educate the public and elected officials on disability issues; (3) to promote effective delivery of federal services and programs to underrepresented populations such as culturally diverse communities, rural residents, and youth with disabilities; and (4) to make NCD a high performance organization. In fiscal year 2001, NCD continued its Disability Civil Rights Monitoring Project by completing research and comprehensive reviews of the first 12 years of enforcement efforts under the 1988 Fair Housing Amendment Act and related legislation and of the first 27 years of enforcement efforts under Section 504 of the Rehabilitation Act of 1973. NCD also began research on the implementation of the Civil Rights of Institutionalized Persons Act of 1980 and the landmark U.S. Supreme Court decision in Olmstead v. L.C. 527 U.S. 581. The NCD also established a Cultural Diversity Advisory Committee to provide advice and recommendations on issues affecting people with disabilities from culturally diverse backgrounds, and expanded its Web site. (CR)

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ED 470 525

ANNUAL PERFORMANCE REPORT TO THE PRESIDENT AND CONGRESS FISCAL YEAR 2001

National Council on Disability

March 29, 2002

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Annual Performance Report to the President and Congress Fiscal Year 2001

This report is also available in alternative formats and on NCD's award-winning Web site (**http://www.ncd.gov**).

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In accordance with 31 USC Sec. 1116 (f), this program performance report was prepared solely by federal employees.

LETTER OF TRANSMITTAL

March 29, 2002

The President
The White House
Washington, DC 20500

Dear Mr. President:

The National Council on Disability (NCD) is pleased to submit its *Annual Performance Report to the President and Congress Fiscal Year 2001*, as required by the Government Performance and Results Act (31 USC Sec. 1116).

As a leader in the development and analysis of disability policy, the National Council on Disability (NCD) conducted various activities in Fiscal Year (FY) 2001, with an authorized budget of $2,615,000. This report compares actual performance with the projected levels of performance set out in NCD's annual performance plan. As a public policy agency with no programs or services, it is often difficult, but not impossible, to measure the effectiveness of the recommendations NCD makes to the President and Congress. Therefore, NCD is delighted to inform you that the findings of this report indicate a very strong link between the allocated resources and NCD's performance. NCD has either met or exceeded the projected levels in its performance plan. NCD's planning, program execution, and reporting demonstrate a high level of accountability for the performance actually achieved.

NCD activities in FY 2001 promoted policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability. These efforts were based on NCD's strategic goals: 1) Enhance the lives of people with disabilities of all ages and backgrounds through the development of policy recommendations; 2) Educate the public and elected officials on disability issues; 3) Promote effective delivery of federal services and programs to underrepresented populations such as culturally diverse communities, rural residents, and youth with disabilities; and 4) Make NCD a high performance organization.

Through its efforts, NCD was able to have a significant impact on the lives of people with disabilities and their families all over the world. Today, there are more than 54 million Americans with disabilities, a full 20 percent of the U.S. population. About half of these individuals have a severe disability, affecting their ability to see, hear, walk, or perform other basic functions of life.

Significant barriers still exist for people with disabilities who try to fully participate in American society. People with disabilities want to be employed, educated, and actively involved in the community. Unfortunately, on average, Americans with disabilities have a lower level of educational attainment, and are poorer and more likely to be unemployed than those without disabilities. In today's global new economy, America must be able to draw on the talents and creativity of all its citizens.

Americans with disabilities should have every freedom to pursue careers, integrate into the workforce, and participate as full members in the economic marketplace. With your support and your New Freedom Initiative, NCD will continue to ensure that people with disabilities will be afforded every opportunity to enter the mainstream of American life.

Sincerely,

Ethel D. Briggs
Executive Director

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate, the Speaker of the U.S. House of Representatives, and the Director of the Office of Management and Budget.)

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OVERVIEW

My Administration is committed to tearing down the barriers to equality that face many of the 54 million Americans with disabilities. Disability is not the experience of a minority of Americans. Rather, it is an experience that will touch most Americans at some point during their lives.

President George W. Bush
New Freedom Initiative, February 2001

Background

NCD is an independent federal agency making recommendations to the President and Congress on issues affecting 54 million Americans with disabilities. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate. In its 1986 report, *Toward Independence*, NCD first proposed that Congress should enact a civil rights law for people with disabilities. Today, there are more than 54 million Americans with disabilities, a full 20 percent of the U.S. population. About half of these individuals have a severe disability, affecting their ability to see, hear, walk, or perform other basic functions of life.

Significant barriers still exist for people with disabilities who try to fully participate in American society. People with disabilities want to be employed, educated, and actively involved in the community. Unfortunately, on average, Americans with disabilities have a lower level of educational attainment, and are poorer and more likely to be unemployed than people without disabilities. In today's global new economy, America must be able to draw on the talents and creativity of all its citizens.

In 1990, the Americans with Disabilities Act (ADA) was signed into law. In the 11 years since it was signed into law, ADA has worked to guarantee equal opportunity for people with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. In 1992, Congress modified NCD's authorizing legislation, Title IV of the Rehabilitation Act of 1973, giving NCD a monitoring role in the enforcement, implementation, and effectiveness of ADA. In 1996, NCD convened a policy summit that included a diverse group of more than 300 leaders from the disability community. These leaders encouraged NCD to monitor and evaluate federal enforcement efforts of ADA and other civil rights laws. NCD's Disability Civil Rights Monitoring Project is currently evaluating the implementation and

enforcement of ADA, the Fair Housing Act, the Individuals with Disabilities Education Act, the Rehabilitation Act, and the Telecommunications Act.

In FY 2001, NCD continued its Disability Civil Rights Monitoring Project by completing research and comprehensive reviews of the first 12 years of enforcement efforts under the 1988 Fair Housing Amendments Act and related legislation and of the first 27 years of enforcement efforts under Section 504 of the Rehabilitation Act of 1973, as amended.

During FY 2001, NCD began research on the implementation of the Civil Rights of Institutionalized Persons Act of 1980 and the landmark U.S. Supreme Court decision in *Olmstead v. L.C. 527 U.S. 581.* Both studies are part of NCD's series of reports known as Unequal Protection Under Law.

The Disability Civil Rights Monitoring Project or Unequal Protection Under Law series grew out of NCD's 1996 national policy summit. On March 18, 1999, NCD produced its first report, *Enforcing the Civil Rights of Air Travelers with Disabilities*. The second report, *Back to School on Civil Rights*, on the enforcement of the Individuals with Disabilities Education Act, was issued on January 25, 2000. The third report, *Promises to Keep: A Decade of Federal Enforcement of the Americans with Disabilities Act*, was released on June 27, 2000. The fourth report, *The Accessible Future*, was issued on June 21, 2001. The enforcement reports to follow in this series will be on the Fair Housing Amendments Act of 1988 and Section 504 of the Rehabilitation Act. They will be released in FY 2002.

Fiscal Year 2001

As a leader in the development and analysis of disability policy, NCD conducted numerous activities in Fiscal Year (FY) 2001, with an authorized budget of $2,615,000. Those activities promoted policies, programs, practices, and procedures that guaranteed equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability. They also helped individuals with disabilities realize the promise of ADA by empowering them to achieve economic self-sufficiency, independent living, inclusion, and integration into all aspects of society.

In FY 2001, NCD reviewed and evaluated new and emerging policy issues that affect people with disabilities. NCD continued to identify the overall needs and concerns of people with disabilities by conducting hearings, forums, and conferences throughout the country, and by

responding to literally thousands of telephone, e-mail, and written inquiries on ADA and other disability civil rights issues.

Major activities for FY 2001 also included the release of several other reports. They are:

- *Brief Amicus Curiae of the National Council on Disability in Support of Respondents, Toyota v. Ella Williams* (August 2001)
- *National Disability Policy: A Progress Report* (June 2001)
- *Position Paper on Patients' Bill of Rights Legislation* (March 2001)
- *Inclusive Federal Election Reform* (March 2001)
- *Applied Leadership for Effective Coalitions* (February 2001)
- *Investing in Independence: Transition Recommendations for President George W. Bush* (January 2001)
- *Implementation Plan for Executive Order 13166—Improving Access to Services for Persons with Limited English Proficiency* (December 2000)
- *Transition and Post-School Outcomes for Youth with Disabilities: Closing the Gaps to Postsecondary Education and Employment* (November 2000)

Cultural Diversity

NCD also established a Cultural Diversity Advisory Committee to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee identifies issues, expands outreach, infuses participation, and elevates the voices of underserved and unserved segments of this nation's population. It also assists NCD in developing federal policy that addresses the needs and advances the civil and human rights of people from diverse cultures. The number of people with disabilities in the United States is approximately 54 million. There are 7.2 million African Americans with disabilities, 4.4 million Hispanic Americans with disabilities, and 1.5 million Native Americans, Asian Americans, and Pacific Islanders with disabilities.

Communications

In addition, it should be noted that due to its reinvigorated communications strategy, NCD continued to generate a high volume of publicity in FY 2001. During the year, NCD received thousands of news clips from its news clipping service, reflecting a high degree of interest by the media in NCD's initiatives and activities. This symbiotic relationship between NCD and the media helps disseminate important disability-related information that affects all Americans with disabilities and their families.

Web Access and Limited English Proficiency

As a result of the publicity, NCD also began receiving more hits on its award-winning Web site (http://www.ncd.gov), with visitors downloading more disability policy reports than in the past. This is particularly relevant for those who require instant access to government information, and in light of the large numbers of people with disabilities who use the Internet.

In addition, NCD added three new features to its award-winning, Section 508 compliant Web site that will be helpful to people with disabilities and those with limited English proficiency (LEP). One of the biggest challenges on the Web is finding what you are looking for. To help users find information more quickly, NCD has added a Netscape Web Publisher search function. This search function allows users to quickly pinpoint specific information anywhere within the NCD Web site. Users can search through NCD documents for a specific word, obtaining search results that list all documents that match the query. Users can then select a document from the list to browse in its entirety. This function provides easy access to server content.

Even before Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), was signed on August 11, 2000, NCD had added a language translation function to its Web site. Known as Babel Fish, this automatic translation service removes language barriers across the World Wide Web. Babel Fish translates to and from English, French, German, Italian, Portuguese, and Russian.

During FY 2001, NCD published its implementation plan for Executive Order 13166 (http://www.ncd.gov/newsroom/publications/limitedenglish.html), which was approved by the U.S. Department of Justice. This plan enunciated NCD's strategy for improving access to services for persons with limited English proficiency.

A list of frequently asked questions was also added to the NCD home page to help users answer standard questions about NCD, its mission, and the availability of disability resources.

These new features are opening opportunities for even those with the most severe disabilities. For Americans with disabilities, technology makes things easier. For Americans with disabilities, technology makes things possible. NCD is ensuring that Americans with disabilities can access the best technologies of today and that even better technologies will be available in the future.

Performance Results

Overall, the findings of this annual performance report clearly indicate that NCD has either met or exceeded the projected levels in our performance plan.

NCD BRIEF DESCRIPTION

Overview and Purpose

NCD is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate.

The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Specific Duties

The current statutory mandate of NCD includes the following:

- Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act; as well as all statutes and regulations pertaining to federal programs that assist such individuals with disabilities, in order to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities.

- Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities at the federal, state, and local levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that operate as disincentives for individuals to seek and retain employment.

- Making recommendations to the President, the Congress, the Secretary of Education, the Director of the National Institute on Disability and Rehabilitation Research, and other officials of federal agencies, respecting ways to better promote equal opportunity,

economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.

- Providing the Congress, on a continuing basis, advice, recommendations, legislative proposals, and any additional information that NCD or Congress deems appropriate.

- Gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

- Advising the President, the Congress, the Commissioner of the Rehabilitation Services Administration, the Assistant Secretary for Special Education and Rehabilitative Services within the Department of Education, and the Director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended.

- Providing advice to the Commissioner with respect to the policies and conduct of the Rehabilitation Services Administration.

- Making recommendations to the Director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration, and the collection, dissemination, and implementation of research findings affecting persons with disabilities.

- Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of this Council for legislative and administrative changes to ensure that such recommendations are consistent with the purposes of the Council to promote the full integration, independence, and productivity of individuals with disabilities;

- Preparing and submitting to the President and Congress an annual report titled *National Disability Policy: A Progress Report.*

- Preparing and submitting to Congress and the President an annual report containing a summary of the activities and accomplishments of NCD.

International

In 1995, NCD was designated by the Department of State to be the official contact point of the U.S. government for disability issues. Specifically, NCD interacts with the special rapporteur of United Nations Commission for Social Development on disability matters.

Consumers Served and Current Activities

While many government agencies deal with issues and programs affecting people with disabilities, NCD is the only federal agency charged with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, status as a veteran, or other individual circumstance. NCD recognizes its unique opportunity to facilitate independent living, community integration, and employment opportunities for people with disabilities by ensuring an informed and coordinated approach to addressing the concerns of persons with disabilities and eliminating barriers to their active participation in community and family life.

NCD plays a major role in developing disability policy in America. In fact, it was NCD that originally proposed what eventually became ADA. NCD's present list of key issues includes improving personal assistance services, promoting health care reform, including students with disabilities in high-quality programs in typical neighborhood schools, promoting equal employment and community housing opportunities, monitoring the implementation and enforcement of ADA, improving assistive technology, and ensuring that people with disabilities from culturally diverse backgrounds fully participate in society.

Statutory History

NCD was initially established in 1978 as an advisory board within the Department of Education (Public Law 95-602). The Rehabilitation Act Amendments of 1984 (Public Law 98-221) transformed NCD into an independent agency.

STRATEGIC PLAN

Vision

The United States of America will be a stronger country when its 54 million citizens with disabilities are fully integrated into all aspects of American life. The United States has made significant progress in recent years in furthering opportunities for education, employment and independent living for people with disabilities through a broad range of programs that protect the rights of individuals with disabilities from discrimination in education, employment, housing and transportation. Yet significant barriers to achieving the goals of independence, inclusion and empowerment for all persons with disabilities still remain. Conflicting, poorly designed or outdated government programs and policies combine with service gaps and continued negative attitudes toward people with disabilities to marginalize the 54 million Americans with disabilities.

The effects of these barriers on both people with disabilities and society are enormous. Physical and spiritual isolation rob individuals of energy, creativity and productivity. Society loses by not enjoying the benefits of their talents and by incurring large costs to supporting them.

Through collaboration with its stakeholders, NCD will pursue a focused agenda which will promote government programs and policies in support of full inclusion of all people with disabilities into the educational, economic and social fabric of the American community. NCD will use the expertise of its diverse membership and well-trained and -managed staff to identify barriers to inclusion and independence and to develop solutions. NCD will listen to people with disabilities across the country to identify emerging issues which need a response.

As the only agency in the Federal Government that addresses the issues of all people with disabilities, regardless of type or severity, NCD will be aggressive and resolute until the day

arrives when people with disabilities in every corner of the land no longer are distinguished by a disability label, but are known as students, workers, parents, neighbors and friends.

Mission Statement

The mission of the National Council on Disability is to promote the full inclusion, independent living and economic self-sufficiency of people with disabilities of all ages and backgrounds by providing advice, analysis, and recommendations on disability policy to the President, Congress, and other federal agencies.

STRATEGIC GOALS, OBJECTIVES, AND RESULTS

I. Enhance the lives of people with disabilities of all ages and backgrounds through the development of policy recommendations.

Objectives:

1.1 Develop and refine policy recommendations at least annually.

1.2 Gather and record information on policy matters affecting people with disabilities through the use of forums, hearings, teleconferences, the Internet, independent studies, and interagency information sharing.

1.3 Monitor the effectiveness of the implementation of the Americans with Disabilities Act and other civil rights laws.

Results:

1.1 NCD reviewed and evaluated new and emerging policy issues affecting people with disabilities at the federal, state, and local levels, and in the private sector, and developed policy recommendations where needed. During FY 2001, NCD produced seven reports and papers containing specific policy recommendations and one amicus brief to the U.S. Supreme Court. They include: *Brief Amicus Curiae of the National Council on Disability in Support of Respondents, Toyota v. Ella Williams; The Accessible Future; National Disability Policy: A Progress Report; Position Paper on Patients' Bill of Rights Legislation; Inclusive Federal Election Reform; Applied Leadership for Effective Coalitions; Investing in Independence: Transition Recommendations for President George W. Bush; Implementation Plan for Executive Order 13166—Improving Access to Services for Persons with Limited English Proficiency;* and *Transition and Post-School*

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Outcomes for Youth with Disabilities: Closing the Gaps to Postsecondary Education and Employment.

Approximately 20,000 hard copies were distributed by NCD's mailing house, while the number of copies downloaded from the NCD Web site increased significantly from FY 2000 to approximately 24,000 copies.

1.2 NCD gathered information and identified the overall needs and concerns of people with disabilities in a variety of ways that included hearings and conferences, and by responding to literally thousands of telephone calls, e-mail messages, and written inquiries.

Under the Federal Advisory Committee Act, NCD conducted several teleconferences and meetings with its advisory committees—International Watch, Youth, and Technology Watch. NCD also established its Cultural Diversity Advisory Committee that provides advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee identifies issues, expands outreach, infuses participation, and elevates the voices of underserved and unserved segments of this nation's population that helps NCD develop federal policy that addresses the needs and advances the civil and human rights of people from diverse cultures.

NCD continued its interagency policy liaison activities with the National Institute on Disability and Rehabilitation Research, the Rehabilitation Services Administration, the Office for Special Education and Rehabilitative Services, the Office of Disability Employment Policy, the Centers for Disease Control and Prevention, the National Center for Medical Rehabilitation Research, the Presidential Task Force on Employment of Adults with Disabilities, and the U.S. General Services Administration.

1.3 During FY 2001, NCD continued its Disability Civil Rights Monitoring Project. Title IV of the Rehabilitation Act requires NCD to gather information about the implementation, effectiveness, and impact of ADA, among other duties. Three hundred leaders from NCD's 1996 policy summit encouraged NCD to monitor and evaluate federal enforcement efforts of ADA and other civil rights laws. In 1999, NCD released its report in this series. Entitled *Enforcing the Civil Rights of Air Travelers with Disabilities: Recommendations for the Department of Transportation and Congress*, this report addressed the enforcement of federal laws protecting the civil rights of people with disabilities. In 2000, NCD released its second and third reports in the series with *Back to School on Civil Rights* and *Promises to Keep: A Decade of Enforcement of the Americans with Disabilities Act*. During FY 2001, NCD's Disability Civil Rights Monitoring Project continued its evaluations of the implementation and enforcement of the Fair Housing Act, the Rehabilitation Act, and the Telecommunications Act.

The release of NCD's technology report, *The Accessible Future*, which was highly publicized, generated numerous articles and editorials about electronic and information technology (E&IT) access for people with disabilities. The report found that access to E&IT is a civil right and there is a need for a national accessibility policy.

NCD issued an appeal to the Federal Government, private industry, and consumers to join forces to increase access to E&IT for people with disabilities. The appeal stems from the reality that increased access will improve the quality of life for people with disabilities. A strong partnership between the government, private industry, and consumers will accelerate what all Americans desire, which is a better life—in this case, for people with disabilities.

An accessible Internet will open opportunities for even those with the most severe disabilities. For Americans with disabilities, technology makes things easier. For Americans with disabilities, technology makes things possible. NCD is ensuring that Americans with disabilities can access the best technologies of today and that even better technologies will be available in the future. The report is available at www.ncd.gov/newsroom/publications/accessiblefuture.html.

In the aftermath of the tragic events of September 11, 2001, NCD wrote to the administrator of the Federal Aviation Administration (FAA) at the Department of Transportation (DOT), extending its support for the way the FAA responded to the need for heightened vigilance in securing our national air transportation system. NCD also offered both support and assistance in developing procedures and training that make safety the highest priority while ensuring full access for people with disabilities to the air transportation system.

Since last spring, NCD has collaborated with DOT's Office of Aviation Enforcement and Proceedings to bring together people with disabilities, the airline industry, and the Federal Government at two forums that addressed eliminating the remaining barriers to air transportation for people with disabilities. The second forum, convened on September 11 as the terrorist attacks began, was rescheduled to a later date. NCD also met several times with the Secretary of Transportation to discuss what more is needed to make the overall U.S. transportation system fully accessible.

As more airports have resumed operation since the attacks, NCD has received calls, letters, and e-mails about the impact of the new security environment on people with disabilities. Because accessible air travel is an ongoing problem for people with disabilities, NCD made several recommendations to DOT, including the following:

—The elimination of curbside check-in and drop-offs has created significant additional barriers to people with mobility impairments and people who are blind. The need for competent and efficient "meet and assist" service at airport drop-off points is more critical than ever.

—Many people with disabilities, especially those with mobility impairments, those who are blind, and those who have cognitive impairments, need assistance until they are at the gate or on the plane. Security procedures must include provisions for screening and clearing assistants and attendants who will not accompany the person with a disability on the flight.

—People who use medical oxygen rely on commercial suppliers to meet them at the airport gate to provide oxygen between connecting flights or until they arrive at their final destination via ground transportation. Security procedures must include provisions for screening and clearing oxygen suppliers; and new restrictions on carry-on items must take into account passengers who depend on ready access to medical equipment and/or medications. Procedures for screening and clearing these necessary items must be included.

The entire letter and recommendations can be found on NCD's Web site at http://www.ncd.gov/newsroom/correspondence/garvey_9-27-01.html.

NCD began research on the Civil Rights of Institutionalized Persons Act (CRIPA) and the U.S. Supreme Court's *Olmstead* decision. The CRIPA study will evaluate the extent to which people with disabilities living in institutions are being served consistent with CRIPA and ADA.

On June 22, 1999, the Supreme Court decision in *Olmstead v. L. C.* ruled that in appropriate circumstances, ADA requires the placement of persons with

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disabilities in a community-integrated setting whenever possible. The Court concluded that "unjustified isolation," for example institutionalization when a doctor deems community treatment equally beneficial, "is properly regarded as discrimination based on disability." Olmstead has yet to be fully implemented. NCD believes that community-based care is critically important to promoting maximum independence and to integrating individuals with disabilities into community life. NCD's *Olmstead* study will evaluate states' implementation of the *Olmstead* decision.

In its 2000-2001 term, the U.S. Supreme Court issued a number of decisions that dramatically changed the ground rules for civil rights lawsuits, making it significantly harder for victims of the most pervasive kinds of discrimination to win court relief. NCD is deeply troubled by the *Alexander v. Sandoval* (121 S.Ct. 1511) decision and its potential to curb lawsuits under a variety of civil rights laws. The elimination of an important legal avenue as a result of the *Sandoval* decision undermines across the board the ability of Americans to respond to systemic denials of their civil rights with lawsuits that employ systemic legal approaches. NCD's analysis of the Supreme Court decision in *Sandoval* and its implications for litigation under ADA, Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act is available at www.ncd.gov/newsroom/publications/sandoval.html

NCD convened ADA stakeholders in a series of meetings to discuss broader strategy issues related to recent Supreme Court decisions and ongoing threats to ADA protections. These meetings are intended to contribute to the development of consensus within the disability community regarding the most practical and efficient strategies for: 1) recovering the scope of protection intended by Congress for people with disabilities; and 2) changing the tide of negative public perceptions regarding the ADA's purpose and goals.

A stakeholder coalition group—Parent Training and Information Centers, National Association of Protection and Advocacy Systems, National Association of State Directors of Special Education, and Part C/Early Intervention lead agencies—working with the U.S. Department of Education, Office of Special Education Programs (OSEP), and NCD in refining OSEP's process for monitoring and enforcement of IDEA, conducted a collaborative effort to improve results for children and youth with disabilities and their families. The stakeholder coalition group developed a plan to be carried out and seeks your input about both the product and the process that created it.

II. Educate the public and elected officials on disability issues.

Objectives:

2.1 Strengthen NCD's communication plan drawing upon new technologies and reaching targeted underrepresented populations.

2.2 Disseminate newsletters and reports on disability policy issues.

2.3 Hold federal partners meetings with Cabinet secretaries, appointees, and other key individuals to review and promote NCD's recommendations.

2.4 Participate in interagency working groups with federal partners on priority issues.

2.5 Serve as the focal point for international activities around the dissemination of information on disability policy in the United States of America and throughout the world.

Results:

2.1 With the continued help of a highly-regarded, minority-owned, public relations firm, NCD continued to refine its communications strategy, which promotes NCD's recommendations and provides greater opportunities for advancing public awareness of disability issues, especially for people from culturally diverse backgrounds. With the assistance of this public relations firm, NCD was able to accomplish its goal of reaching targeted populations that often go unnoticed or unserved. Through the standard use of a newspaper clipping service, NCD was able to realize a huge increase in the number of minority-owned newspapers that ran stories relating to NCD and disability policy.

NCD announced the continuation of the National Disability Fellowship Program in Washington, DC, which identifies and develops new leaders with disabilities to enhance NCD's policy capacity. The annual program provides experience, training, and contacts to qualified individuals with disabilities. Selected fellows receive benefits (including health insurance), a competitive stipend to cover living expenses, and reasonable relocation expenses. The second appointment, which will not exceed one year, began in January 2001.

2.2 NCD disseminated its newsletter to more than 12,000 people each month. NCD distributed its reports to more than 20,000 people. Thousands of copies of the newsletter and various reports were downloaded and e-mailed from NCD's award-winning Web site, which received more than 2,000,000 hits during FY 2001. In addition, NCD's newsletter is also now distributed by www.disabilitydirect.gov.

2.3 During FY 2001, NCD met with key administration officials to encourage their adoption of and action on key recommendations within the general policies and procedures of their departments. NCD coordinated regular meetings with political appointees responsible for disability-related federal programs. NCD met with

congressional staff and members of Congress on numerous occasions to discuss new and emerging disability policy issues. NCD met with staff at the Congressional Office of Compliance, which was established to implement and enforce the Congressional Accountability Act (CAA) of 1995, regarding NCD's recommendation urging Congress to ensure that full coverage of the Americans with Disabilities Act and the Rehabilitation Act is extended to all instrumentalities of Congress, including the Government Printing Office, the General Accounting Office, and the Library of Congress, and other Congressional offices. NCD recommended that all Congressional offices and instrumentalities comply with Section 508 of the Rehabilitation Act of 1973, which requires access to the Federal Government's electronic and information technology be made applicable. In addition, NCD provided testimony to the U.S. House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, and Education, regarding its appropriation request. The U.S. Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies also received testimony from NCD regarding its budget request. NCD also provided testimony for the record of the U.S. Senate Committee on Finance, Society's Great Challenge: The Affordability of Long-Term Care Hearing. NCD also testified before the U.S. House of Representatives, Committee on Government Reform, at a hearing on the Individuals with Disabilities Education Act.

Before the July 19 meeting of the House-Senate conference on the No Child Left Behind Act of 2001 (H.R. 1) education bill, NCD submitted recommendations to all House-Senate conferees. The House and Senate bills (H.R.1, as amended, and S.1) include damaging amendments that would allow schools to remove students from the classroom and cease the provision of services to these students for violations of school behavioral codes. A review of NCD research makes it clear that these amendments would thoroughly undermine the educational gains that

have been made in this country over more than 25 years for students with disabilities. Both the House and Senate "discipline" amendments are inconsistent with research findings of NCD and with recommendations NCD previously submitted to Congress through assessment studies of the Individuals with Disabilities Education Act (IDEA) implementation. Students with disabilities need the guarantee of consistency in their education. The social cost of abandoning this guarantee is far too high to justify these amendments.

NCD, educators, students, and their parents have found that IDEA is a good, solid law. If IDEA were fully funded and implemented, classroom behavior would not be an issue for debate. Therefore, NCD recommended (1) removing the discipline amendments in the consolidated bill; (2) replacing the amendments with assurances that appropriate training, supports, and services will be provided to teachers and students; and (3) accepting the full funding amendment, with language that instructs the Department of Education and the Department of Justice to work together to ensure full compliance of the law in every state.

In an August 29 letter (www.ncd.gov/newsroom/correspondence/olson_8-29-01.html) to Solicitor General Theodore B. Olson (with copies to the Supreme Court Justices), NCD urged the Department of Justice (DOJ) to support the decision of the U.S. Circuit Court of Appeals in *Echazabal v. Chevron USA, Inc.* , 226 F.3d 1063 (9th Circuit 2000). The U.S. Supreme Court recently requested an opinion from DOJ on whether employers must hire workers with disabilities who face grave risks to their health or lives in carrying out the essential functions of the job.

The Ninth Circuit held that the risk to *Echazabal's* own health posed by his employment in the coker unit at Chevron does not affect whether he is a qualified individual with a disability protected by the nondiscrimination provisions of

ADA. In finding that *Echazabal* is entitled to protection under ADA, the court addressed several important issues of statutory interpretation, conflicting public policies, and the meaning of "essential job function."

The holding in *Echazabal* adheres to the plain meaning of the "direct threat" defense as defined in ADA as "a significant risk to the health and safety of others that cannot be eliminated by reasonable accommodation," and explicitly rejects the Equal Employment Opportunity Commission's broader regulatory interpretation. The Supreme Court is now deciding whether to consider the merits of the case.

The U.S. Government Printing Office (GPO) will revise 30,000 archived Web pages to comply with Section 508 accessibility standards. NCD raised the issue with GPO on several occasions, providing it with information on the need and means for making its pages accessible to people with disabilities. Of course, Section 508 applies to more than just Web pages. NCD's recent report, *The Accessible Future* (www.ncd.gov/newsroom/publications/accessiblefuture.html), discusses other ways Section 508 applies to electronic and information technology.

2.4 NCD continued its interagency policy liaison activities with the National Institute on Disability and Rehabilitation Research, the Rehabilitation Services Administration, the Office for Special Education and Rehabilitative Services, the President's Committee on the Employment of People with Disabilities, the Centers for Disease Control and Prevention, the National Center for Medical Rehabilitation Research, and the Presidential Task Force on Employment of Adults with Disabilities. The task force brings the power of government to attempt to increase the employment rate of people with disabilities to a rate closer to the general employment rate in the United States. The creation of the task force

stems from a recommendation developed at NCD's 1996 National Summit on Disability Policy by a diverse group of more than 300 disability community leaders. NCD is a member of the task force.

2.5 As the original author of the Americans with Disabilities Act, NCD continued to be the focal point for international activities around the dissemination of information on disability policy in the United States and throughout the world. To that end, NCD continued to serve as the official point of contact with the U.S. government for disability issues. NCD's International Team and International Watch advisory group met on several occasions to discuss international disability policy.

III. Promote effective delivery of federal services and programs to underrepresented populations such as people from culturally diverse backgrounds, rural residents, and youth with disabilities.

Objectives:

3.1 Monitor federal agencies having civil rights responsibilities to evaluate their efforts to serve underserved populations such as people from culturally diverse backgrounds, rural residents, and youth with disabilities, and develop recommendations to enhance services to these populations.

3.2 Promote "best practices" programs of education and empowerment regarding disability rights for people from culturally diverse backgrounds, rural residents, and youth with disabilities.

3.3 Provide an opportunity for leadership development for youth with disabilities.

3.4 Establish relationships with national organizations serving these underrepresented populations.

Results:

3.1 NCD established a Cultural Diversity Advisory Committee that provides advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee assists in identifying issues, expanding outreach, infusing participation, and elevating the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

This advisory committee held its first meeting in July. This is an on-going activity.

NCD is also represented on the Interagency Working Group for the White House Initiative on Asian Americans and Pacific Islanders.

3.2 NCD promoted "best practices" programs of education and empowerment regarding disability rights for people from culturally diverse backgrounds, rural residents, and youth with disabilities by meeting with stakeholders and representatives of disability and traditional civil rights groups to discuss the unique issues faced by culturally diverse people with disabilities.

3.3 NCD released its *Transition and Post-School Outcomes for Youth with Disabilities: Closing the Gaps to Post-Secondary Education and Employment* report, which analyzed research on the status of transition, post-secondary education, and employment outcomes over the past 25 years for primarily 14 to 22

year old youth and young adults with disabilities, identified what has worked, and what should work in light of unmet needs and unserved populations, and, finally, presented recommendations for national, state, and local community action.

NCD participated in the fourth annual National Leadership Conference for Youth with Disabilities. The brainchild of NCD, the purpose of the conference was for youth to learn from national disability leaders about national disability policy, civil rights, the public policy process and leadership, employment opportunities, and related programs available to them; to identify barriers to their economic independence, provide input to the public policy process, and identify future programs to support economic independence and leadership among all youth with disabilities; and to create solidarity and community among the participants, building confidence and resolve to take action.

NCD's Youth Advisory Committee met several times, providing advice to the National Council on Disability on various issues such as NCD's planning and priorities. NCD is seeking this type of input in order to make sure NCD's activities and policy recommendations respond to the needs of youth with disabilities.

3.4 During FY 2001, NCD continued its relationships with national organizations serving underrepresented populations, such as the Leadership Conference on Civil Rights, National Council of La Raza, National Urban League, and the NAACP, to name a few. NCD representatives participated in the national conferences of these civil rights organizations, bringing the issue of disability to the forefront for underrepresented and culturally diverse groups. NCD also participated in a disability issues panel at the annual conference of the Congressional Black Caucus.

IV. Make NCD a high performance organization.

Objectives:

4.1 Provide the necessary tools and training to achieve a highly skilled and high-performing work force.

4.2 Provide a physical environment that promotes the health and well-being of employees.

Results:

4.1 In order for NCD staff to stay current with critical issues facing people with disabilities and improve their technical skills, participation in training programs is necessary. Specific training needs were identified for individual staff development plans. Staff attended training programs in one or more of the following areas such as contract management, computer technology, financial management, supervision, management, media relations, and other areas.

4.2 NCD is a leader in providing a physical environment that promotes the health and well-being of its employees. All accommodations that are necessary for employees with disabilities to perform at the highest levels are made. These accommodations may include braille printers, telecommunications devices for the deaf, sign language interpreters, special lighting, large screen computer monitors, ergonomic furniture, etc. NCD is also located in a very accessible building in Washington, DC. Every effort is made to create a physical atmosphere that equates to productive employees.

Federal Managers' Financial Integrity Act
Signed Assurance Statement

March 29, 2002

Mitchell E. Daniels, Jr., Director
Office of Management and Budget
Executive Office Building
17th Street and Pennsylvania Avenue, NW
Washington, DC 20503

Dear Mr. Director:

On the basis of NCD's management control process, I am pleased to certify, with reasonable assurance, that NCD's systems of accounting and internal controls are in compliance with the internal control objectives in OMB's Bulletin Number 01-02. I also believe these same systems of accounting and internal controls provide reasonable assurance that the Agency is in compliance with the provisions of the Federal Managers' Financial Integrity Act.

The Federal Managers' Financial Integrity Act requires agencies to provide an annual statement of assurance regarding management controls and financial systems. The National Council on Disability (NCD) is pleased to report continued progress in strengthening management controls. The continuous improvement of program and operational management process is ongoing. Agency financial management controls and systems, taken as a whole, provide reasonable assurance that accounting systems comply with appropriate federal requirements. This conclusion is based on the review and consideration of internal analyses, reconciliations, reports, other information, and an independent public accountant's opinion on the financial statements and reports on the internal control structure and compliance with laws and regulations. Reasonable controls are presently in place and no instances of material weaknesses or noncompliance with law or regulation have been identified.

NCD is audited every two fiscal years. The audit for fiscal 1999 and 2000 was completed and transmitted to OMB. The auditor did conclude that NCD had one instance of noncompliance and subsequently violated the Anti-deficiency act. This issue is currently under review at OMB with an expectation of resolution shortly. In addition, for reasons stated in a Memorandum from the Office of General Counsel, U.S. General Services Administration, who reviewed the auditor's opinion, NCD does not agree with the auditor's finding. A copy of that Memorandum is attached as Appendix A.

This does not mean there are no management improvement opportunities. These opportunities are being identified by NCD through audits, internal reviews and other evaluations. Steps are being taken to implement solutions and ensure an efficient and progressive management process.

If there are any questions or additional information needed, please contact the NCD office, 202-272-2004.

Sincerely,

Ethel D. Briggs
Executive Director

CONCLUSION

In conclusion, the National Council on Disability continues to be a leader in the development and analysis of disability policy. The use of the *Annual Performance Report to the President and Congress Fiscal Year 2001*, as required by the Government Performance and Results Act, has greatly assisted NCD is carrying out its mission. The findings of this report clearly indicate that NCD has either met or exceeded the projected levels in its performance plan.

GSA

GSA Office of General Counsel

June 12, 2001

MEMORANDUM FOR MARCA BRISTO
CHAIRPERSON
NATIONAL COUNCIL ON DISABILITY

ETHEL BRIGGS
EXECUTIVE DIRECTOR
NATIONAL COUNCIL ON DISABILITY

FROM: LESLY P. WILSON
SENIOR ASSISTANT GENERAL COUNSEL
REAL PROPERTY DIVISION (LR)

SUBJECT: Report of Auditors Concerning the Council's Finances for FY 1999 and 2000

The National Council on Disability (Council) has recently been audited by an outside audit firm, Allmond & Co. As a result of the audit of the Council's activities, the auditor has made a draft finding that the Council has obligated and expended appropriated funds from the Gift Fund in excess of those available during FY 1999 and FY 2000, and thus incurred an anti-deficiency. The Council has requested a legal opinion from this office concerning the auditor's preliminary findings.

The Council entered into three Interagency Agreements in FY 1998. The first two agreements with the Social Security Administration required the Council to 1) provide an interagency policy and program review and report on career planning and employment opportunities for young people with disabilities, and 2) convene a youth leadership meeting to educate young people with disabilities on their rights and opportunities. These agreements were signed by the Social Security Administration as the final signatory on July 22, 1998 and August 12, 1998, respectively. The third Interagency Agreement with the Department of Education required the Council to design and implement a youth disabilities leadership development program. The Department of Education gave the final approval on August 20, 1998. The first two Interagency Agreements with the Social Security Administration cite the Economy Act, 31 U.S.C. § 1535, as the authority to enter into the agreements. The agreement with the Department of Education cites the enabling act for the Council, 29 U.S.C. § 780 et seq., and 20 U.S.C. § 3475 as the authority for the agreement. Pursuant to the requirements of the Interagency Agreements, funds were transferred from the ordering agencies to the Council for the Council's use in fulfilling the terms of the agreement. In all three agreements, annual appropriations were transferred to the Council's no-year Gift Account.

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002

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Whenever a Federal agency wishes to procure either goods or services from either a commercial entity or another agency, it must ensure that it has the authority to obtain the goods or services and that it has available funds for the purpose. It must also obligate the funds to be expended. Under normal rules of appropriations law (31 U.S.C. § 1501 (a)), an agency is required to record an obligation when it has documentary evidence of:

1) a binding agreement between an agency and another person, including An agency, that is in writing and for a purpose authorized by law and

2) executed before the end of the period of availability for obligations of the appropriation or fund used for work to be provided.

A determination of whether an agreement is "binding" for the purposes of recording under 31 U.S.C. § 1501(a)(1) when two federal agencies are involved is determined by examining what the parties have "committed" to do under the terms of the agreement since there are no legal ramifications for non-compliance with the agreement. See GAO, Principles of Federal Appropriations Law, Vol. II, Pg. 7-23, footnote 9 (1992).

One way in which an agency can obtain assistance from another agency is through an interagency agreement. Generally, agencies are authorized to enter into interagency agreements pursuant to the Economy Act, 31 U.S.C. § 1535(a) when:

1. Amounts are available
2. The head of the ordering agency decides the order is in the best interests of the Government
3. The other agency is able to provide the requested goods or services
4. The agency head decides the goods or services cannot be provided as cheaply or conveniently by a commercial enterprise

When an agency enters into an interagency agreement pursuant to the Economy Act, 31 U.S.C. § 1535, the funds transferred by the ordering agency are obligated at the time the agreement is signed by both parties. Under subsection 1535(d), however, those funds must be deobligated to the extent that the agency filling the order has not incurred obligations before the end of the period of availability of the appropriation by making an authorized contract with another person to provide the requested goods or services. Therefore, where the statutory authority for an agreement is the Economy Act, 31 U.S.C. § 1535(d) requires the performing agency to use the funds transferred pursuant to the agreement before the funds expire, or in this case, before the end of the fiscal year since one year funds were transferred. The rationale for this requirement is that it prevents agencies from extending the obligational life of an appropriation beyond that provided by Federal Appropriations Law, Vol. II, Pg. 7-23 (1992)

The General Accounting Office has recognized, however, that the Economy Act does not constitute the sole authority for interagency agreements. 55 Comp. Gen. 1497 (1976)

APPENDIX A

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When an interagency agreement is based on statutory authority other than the Economy Act, the recording of the obligation is still governed by 31 U.S.C. § 1501(a)(1). 31 U.S.C. § 1535(d) however, does not apply. "In this situation, the obligation will remain payable in full from the appropriation initially charged, regardless of when performance occurs, in the same manner as contractual obligations generally, subject, of course, to the bona fide needs rule and to any restrictions in the legislation authorizing the agreement. GAO, Principles of Federal Appropriations Law, Vol. 11, Pg. 7-23 (1992), B-167790, September 22, 1977. In a case identical to the situation at issue here, the Comptroller General, after discussing the independent statutory authority for the agency's actions held that,

> "...the Administrative Office committed itself for the payment of a definite sum of money, for the delivery and installation of an ADP system to meet a bona fide need arising in fiscal year 1976. Accordingly, we are of the view that the applicable appropriation was properly obligated pursuant to 31 U.S.C. § 200(a) (now § 1502) for the full amount stipulated in the agreement on the date of execution thereof... and is available for liquidation of the obligation during the entire period of performance." 55 Comp. Gen. 1497 (1976).

Consequently, if there is independent statutory authority outside of the Economy Act for the Council to have entered into these agreements, the Council was not required by 31 U.S.C. § 1535(d) to deobligate the funds transferred to perform the work stipulated in the agreements.

The National Council on Disability is authorized in 29 U.S.C. § 783(b)(2)(C) to enter into contracts and cooperative agreements with Federal and State agencies, private firms, institutions, and individuals for the conduct of research and surveys, preparation of reports and other activities necessary to the discharge of the Council's duties and responsibilities. In 29 U.S.C. § 781(a)(7) and 8), the Council is tasked with the responsibility to gather information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 and to make recommendations to the President, the Congress, the Secretary, the Director of the National Institute on Disability and Rehabilitation Research, and other officials of Federal agencies or other Federal entities, respecting ways to better promote the policies set forth in 29 U.S.C. § 780(a)(2) Section 780(a)(2) states that the purpose of the National Council is to promote policies, programs, practices, and procedures that A) guarantee equal opportunity for all individuals with disabilities, and B) empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

It is clear from the above that the National Council on Disability has the independent statutory authority to enter into interagency agreements with other Federal agencies, and the public, and to provide the kinds of studies and reports requested by the other agencies. Since the Council had an independent statutory authority outside of the Economy Act, 31 U.S.C. § 1535 (d) is not applicable and the Council did not violate the provisions of the Economy Act. It therefore follows that because the Economy Act

Provision was not violated, there was no requirement that the funds transferred be deobligated from the Council's Gift Account at the end of the fiscal year.

Since funds were available, there is no Anti-Deficiency Act Violation. The Council incorrectly cited the Economy Act as the source of authority rather than the enabling authority for the Council, 29 U.S.C. § 783. The fact that the incorrect authority was cited in two of the Interagency Agreements does not negate the fact that the Council had the ability to take the actions that were taken and to transfer the funds into the account, the no year Gift Account, that was established for that purpose. It is not appropriate to determine that an agency violated a statute merely because it cited the wrong authority for the actions taken. The proper action to take with regard to the Interagency Agreements with the Social Security Administration is to correct the documentation to show that the authority for the agreement was the Council's enabling authority, 29 U.S.C. § 783, which was clearly applicable. We would therefore recommend that the MOU be amended to reflect the corrected applicable citation.

With regard to the third Interagency Agreement with the Department of Education, the Interagency Agreement correctly cites the enabling authority of the Council and the applicable authority of the Department of Education. That agreement, however, states that the funds had to be obligated prior to the end of the fiscal year. In fact, the funds were fully obligated when the Department of Education transferred the funds to the Council pursuant to the Interagency Agreement. There was a binding agreement between the Department of Education and the Council that is evidenced by the terms of the Interagency Agreement. Subject to the provisions of 31 U.S.C. § 1501(a), the funds had to be obligated. Thus there was a proper obligation of funds and, as noted above, the funds were available for expenditure during the entire period of performance. 55 Comp. Gen. 1497 (1976). To the extent that funds were not fully obligated to an outside consultant by issuance of a purchase order before the end of the fiscal year, the Council has violated the terms of the Interagency Agreement. This, however, does not constitute a violation of the Economy Act or the Anti-Deficiency Act. Thus funds were available for use until the work for the Department of Education was completed.

A question has also been raised concerning the availability of the Gift Account for the deposit of the funds transferred by the Interagency Agreements. The Gift Account, a no-year revolving fund, was authorized by Congress in the Rehabilitation Amendments of 1984, Pub.L.98-221 as an amendment to the Council's enabling legislation. The original provision did not authorize the Council to solicit gifts. In 1998, however, the provision establishing the Gift Account was amended to read,

> "The National Council may
>
> (A)...
>
> (B) in the name of the Council, solicit, accept, employ, and dispose of, in furtherance of this chapter [29 U.S.C.A.701 et seq.], any money or property, real

or personal, or mixed, tangible or nontangible, received by gift, devise, bequest, or otherwise;..." (Emphasis added)

Generally, an agency must have specific statutory authority to establish a revolving fund or no-year account. The enabling statute will specify the receipts that may be credited to the fund and the purposes for which they may be expended. GAO, Principles of Federal Appropriations Law, Vol. II, Pg. 6-130, (1992).

At the time that the Council's actual Gift Account established at the Department of Treasury, the authority cited was the enabling act for the Council. No further discussion of the purpose of the Account was cited or discussed. No limitations were included. Thus, the intent of Congress in authorizing the Account must be examined.

The Gift Account has a broad statutory authority. At the time of enactment of the provision there was no discussion about the parameters of the account. In fact, there was no discussion at all concerning the account in either the Committee Reports which constitute the legislative history of the Act or in the discussion in the House of Representatives or Senate prior to enactment. The provision was included as part of a larger package to maximize the Council's ability to operate effectively. There are certainly no restrictions included in the statutory language establishing the Account. Consequently, the Council is authorized to either solicit or accept funds, and real or personal property in many ways. A donor can simply will, transfer, or give a gift to the Council. Furthermore, the Council has the authority to accept a transfer of funds or property accomplished "otherwise", i.e. by other means than by simply giving, bequeathing, or transferring. This would clearly include the ability to deposit funds transferred from another agency to perform work that is specifically authorized in the enabling statute. It appears obvious, therefore, that the Council has the ability to use the Gift Account for purposes that are within the scope of its authority. Here, the Council clearly did so.

From a review of the Council's enabling legislation, the Interagency Agreements themselves, and general appropriations laws, it is my conclusion that the Council did not violate the Anti-deficiency Act and is not required to submit a report to the Congress and to the President.

If you have any questions, please feel free to contact me at (202) 501-1664.

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